



POLICY BRIEF

Supplemental Award In Indus Waters Case -No Legal Basis For India's 'Abeyance'

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India's Purported "Abeyance" of the Indus Waters Treaty

On 27 June 2025, the Court of Arbitration ("CoA"), empanelled under the Indus Waters Treaty 1960 ("IWT"), issued a Supplemental Award that affirmed Pakistan's position regarding India's unilateral "abeyance" of the Treaty. The Award reinforced the view that India's unilateral actions were inconsistent with the established legal mechanisms of the historic water-sharing arrangement.

Following the Pahalgam terrorist attack, India claimed that it had held the IWT in "abeyance." The Indian government, based on unverified information, blamed Pakistan for its alleged "support for cross-border terrorism". Following that, India announced that "the Indus Waters Treaty 1960 will be held in abeyance with immediate effect."¹

Pakistan's Response

In response, Pakistan sent a strongly worded letter to India. In the letter, Pakistan reaffirmed its condemnation of terrorism in all its forms and expressed its willingness to participate in a neutral and transparent investigation into the incident. Furthermore, Pakistan asserted the illegality of holding the IWT in abeyance and emphasized that the Treaty remains in force.

Procedural Order and the Supplemental Award

On 16 May 2025, the CoA issued Procedural Order No. 15 (Recent Developments that May Bear on Matters), inviting both Parties to comment on whether the recent developments had any bearing on the issues pending before the Court or the Neutral Expert, including the question of competence.² Pakistan submitted its response pursuant to this order, while India continued to boycott the CoA proceedings and chose not to file a submission.

On 27 June 2025, the CoA, with the Permanent Court of Arbitration ("PCA") acting as the Secretariat, issued its Supplemental Award. This Award was rendered in the arbitration

¹ Ministry of External Affairs, 'Statement by Foreign Secretary on the decision of the Cabinet Committee on Security (CCS)' (23 April 2025) Government of India [https://www.mea.gov.in/Speeches-Statements.htm?dtl/39442/Statement by Foreign Secretary on the decision of the Cabinet Committee on Security CCS](https://www.mea.gov.in/Speeches-Statements.htm?dtl/39442/Statement%20by%20Foreign%20Secretary%20on%20the%20decision%20of%20the%20Cabinet%20Committee%20on%20Security%20CCS) accessed 1 July 2025.

² PCA Case No 2023-01 (Pakistan v India), Procedural Order No 15 (Recent Developments That May Bear on Matters Before the Court) (16 May 2025) Court of Arbitration constituted in accordance with the Indus Waters Treaty 1960 <https://pcacases.com/web/sendAttach/76014> accessed 1 July 2025.

initiated by Pakistan in 2016 under Article IX and Annexure G of the IWT.³ The Award addressed the competence of the Court in light of the recent developments, particularly India's decision to hold the Treaty in abeyance, and whether this unilateral action had any bearing on the proceedings before the Court. In other words, the CoA examined whether India's unilateral decision to put the Treaty in abeyance affected the Court's authority to continue with the arbitration.

Applicable Law

In determining the applicable law, the CoA relied on Paragraph 29 of Annexure G of the IWT, which provides that the Treaty itself shall govern its interpretation and application. However, where necessary, relevant international conventions and customary international law may also be applied.⁴

Competence of the Court

The Court emphasized that it alone has the authority to determine its own competence, based on the consent given by both India and Pakistan when they signed and ratified the IWT. Under customary international law, a court's jurisdiction is assessed at the time proceedings are initiated; subsequent events such as a party's attempt to suspend the Treaty do not affect that jurisdiction.⁵ This principle has been consistently upheld by the International Court of Justice ("ICJ") and other international tribunals. For instance, in *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, the ICJ reaffirmed that "*the date at which its jurisdiction has to be established is the date on which the application is filed with the Court,*" and held that "*the removal, after an application has been filed, of an element on which the Court's jurisdiction is dependent does not and cannot have any retroactive effect.*"⁶

³ PCA Case No 2023-01 (Pakistan v India), Supplemental Award on the Competence of the Court (27 June 2025) Court of Arbitration constituted in accordance with the Indus Waters Treaty 1960 <https://pcacases.com/web/sendAttach/75789> accessed 1 July 2025.

⁴ Indus Waters Treaty, 419 UNTS 126, Annexure G para 29 <https://treaties.un.org/doc/Publication/UNTs/Volume%20419/volume-419-I-6032-English.pdf> accessed 1 July 2025.

⁵ Supplemental Award on the Competence of the Court (n 3) para 60.

⁶ Supplemental Award on the Competence of the Court (n 3) para 61.

Allowing unilateral actions to extinguish jurisdiction, after proceedings have commenced, would undermine legal certainty and enable states to escape binding dispute resolution.

No Legal Basis for Unilateral Abeyance

In determining the legal implications of India's assertion of "abeyance," the CoA placed significant reliance on the text of the Treaty and held, in clear terms, that the IWT does not permit unilateral suspension or abeyance by either party. As the Court noted, "*the Treaty does not provide for the 'abeyance' or 'suspension' of the Treaty, either unilaterally or by agreement.*"⁷ Instead, the Treaty provides that "*the provisions of this Treaty, or the provisions of this Treaty as modified under the provisions of Paragraph (3), shall continue in force until terminated by a duly ratified treaty concluded for that purpose between the two Governments*".⁸ The Court concluded that "*the text of the Treaty, therefore, does not provide for the unilateral 'abeyance' or 'suspension' of the Treaty.*"⁹

The object and purpose of the Treaty, namely to establish binding and compulsory dispute resolution, would be fundamentally compromised if one party were allowed to unilaterally bypass its provisions. The Court observed, "*it is difficult to see how this object and purpose of the Treaty—compulsory dispute resolution for definitive resolution of disputes arising between the Parties—could possibly be achieved if it were open to either Party, acting unilaterally, to suspend an ongoing dispute settlement process.*" Such an interpretation, the Court noted, would fundamentally undermine "*the value and efficacy of the Treaty's compulsory third-party dispute settlement process.*"¹⁰

The CoA also held that its findings apply *mutatis mutandis* to the proceedings before the Neutral Expert as well.

The Court's observation that the text of the Treaty does not provide for the unilateral "abeyance" or "suspension" of the Treaty is a strong and categorical rejection of India's legal position. By affirming that the Treaty remains in force unless terminated through mutual consent, and that unilateral action cannot alter the rights, obligations, or dispute resolution

⁷ Supplemental Award on the Competence of the Court (n 3) para 54.

⁸ Indus Waters Treaty (n 4) art XII(4).

⁹ Supplemental Award on the Competence of the Court (n 3) para 55.

¹⁰ Supplemental Award on the Competence of the Court (n 3) para 56.

procedures under the Treaty, the Court has effectively established India's violation of the Treaty.

Significance of the Award for Pakistan

The Supplemental Award can be interpreted to reaffirm Pakistan's position that the IWT remains valid and operational. Hence, India's unilateral attempt to hold the IWT in "abeyance" is without any basis under international law.

The Supplemental Award is a significant legal victory for Pakistan. It reaffirms the continued validity of the IWT despite India's attempts to hold it in abeyance. By rejecting the notion that a unilateral declaration can set aside the Treaty or affect the jurisdiction of the Court, the Award vindicates Pakistan's consistent position that the IWT remains in force and must be implemented in full.

Furthermore, it strengthens Pakistan's legal standing in the ongoing Kishanganga and Ratle disputes and sends a clear message that treaty obligations cannot be set aside through unilateral political declarations. The ruling also reinforces the binding nature of third-party dispute settlement under the IWT, which has long been central to Pakistan's approach in managing transboundary water issues with India.